The Legal Regime of the Oceans and Airspace

Law of the Sea

Maritime Zones

Navigation and Overflight Rights

Freedom of Navigation Program

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Law of the Sea

Law of the Sea

- Rules and principles that bind States in their international relations concerning maritime matters
- The limits of maritime zones
- Navigation and overflight rights

United Nations Convention on the Law of the Sea

- A comprehensive framework within which most uses of the sea are addressed
- 135 Parties to the Convention, including the European Community
- Represents a careful balance of coastal state interests and traditional rights of navigation and overflight.

Status of the Convention

- Entered into force November 16, 1994
- U.S. is not a Party
- Sent to the Senate for advice and consent on October 6, 1994; awaiting Senate action.
- U.S. views most provisions of the Convention as customary international law and adheres to its substantive provisions

Sovereign Immunity

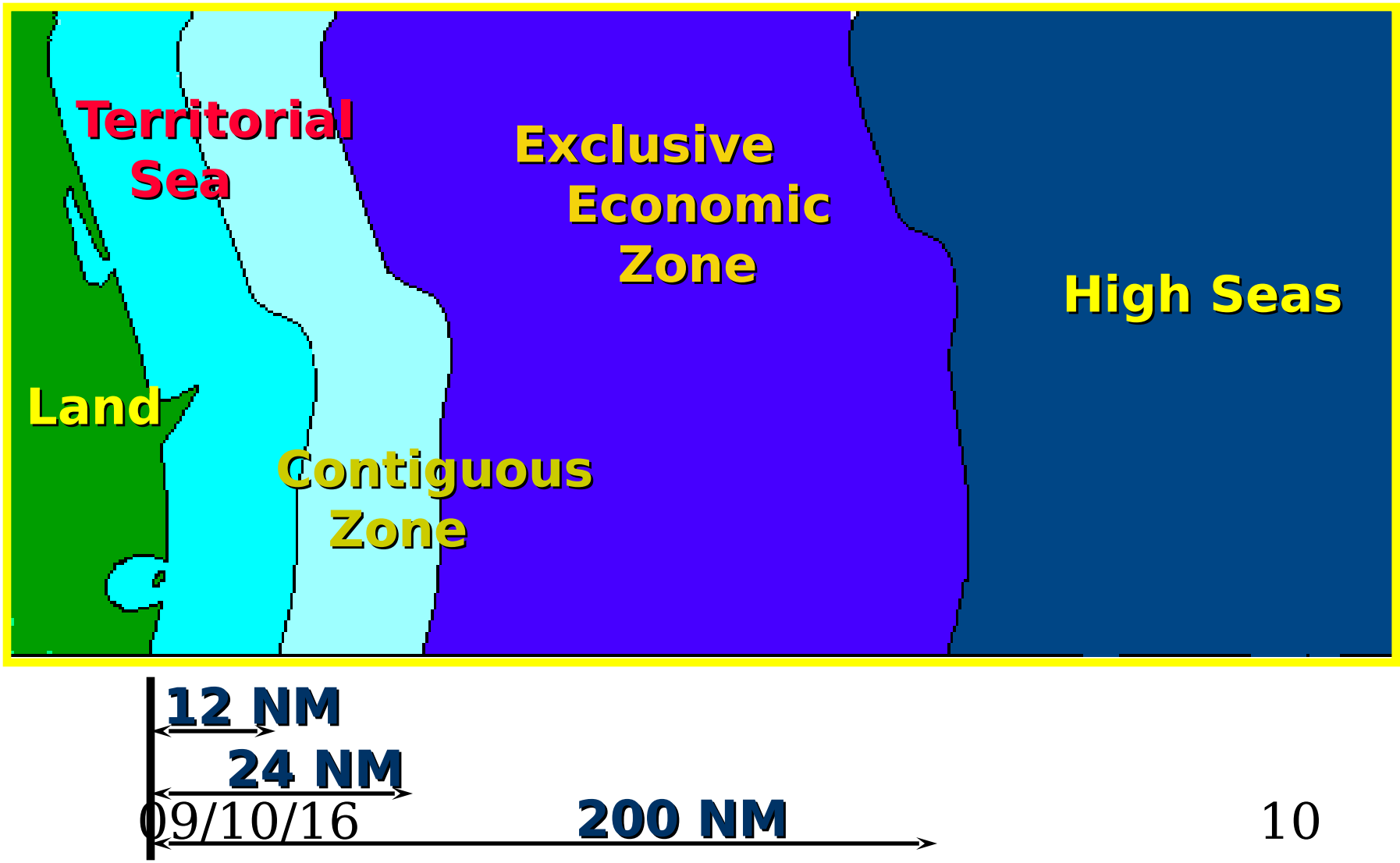
- U.S. military aircraft, warships, and auxiliaries enjoy sovereign immunity from interference by authorities of nations other than the flag nation
- Foreign authorities may board only with the permission of the commander.
- Foreign authorities may not search, inspect, seize or arrest a sovereign immune ships or aircraft
- Military aircraft proceeding to or from a foreign port under diplomatic clearance shall comply with reasonable host country requirements on health, customs, and traffic control as a matter of policy

Maritime Zones

Maritime Zones

- Baselines
- Internal Waters
- Territorial Sea
- Straits
- Archipelagos
- Contiguous Zone
- Exclusive Economic Zone

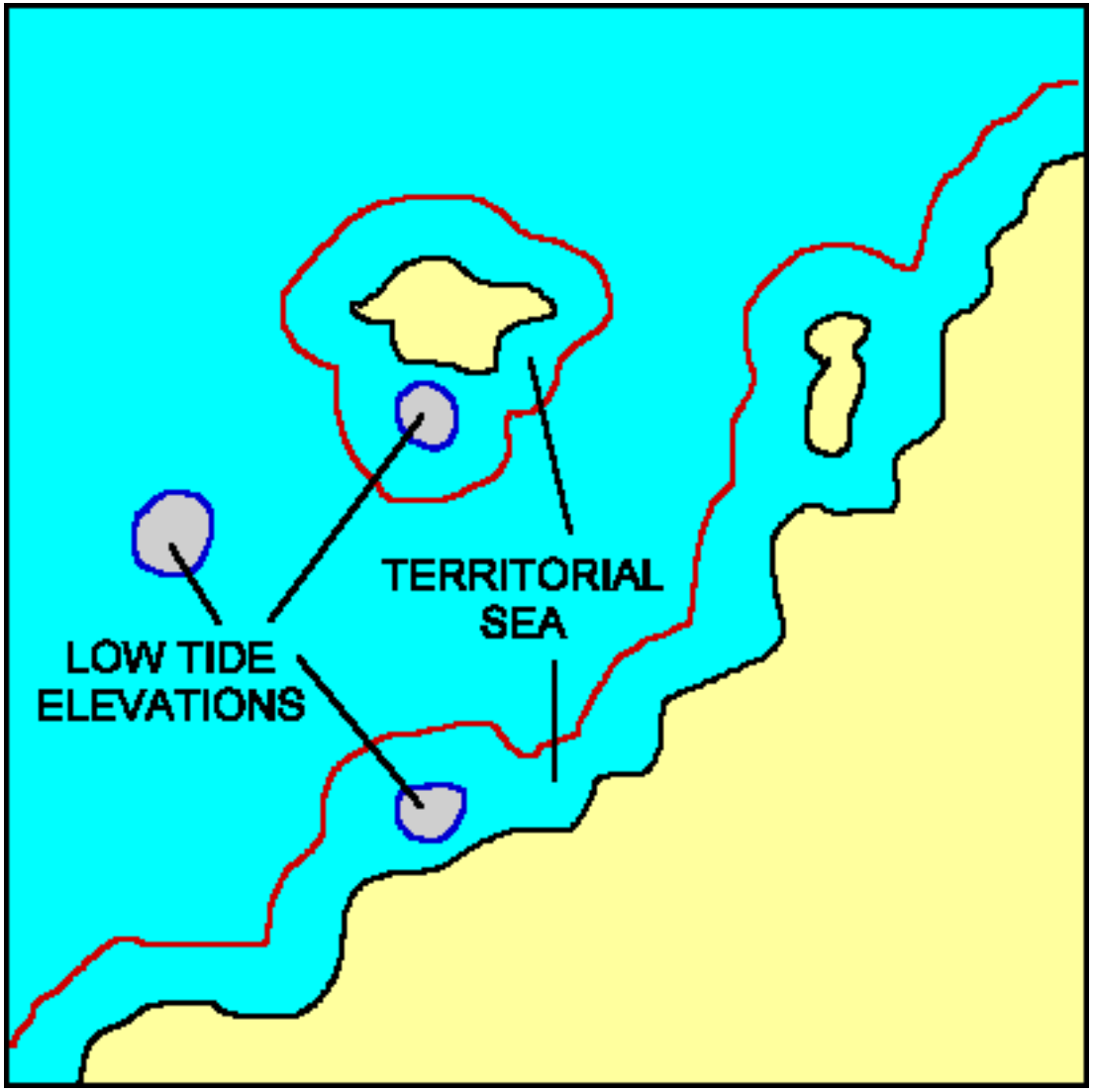
Maritime Zones



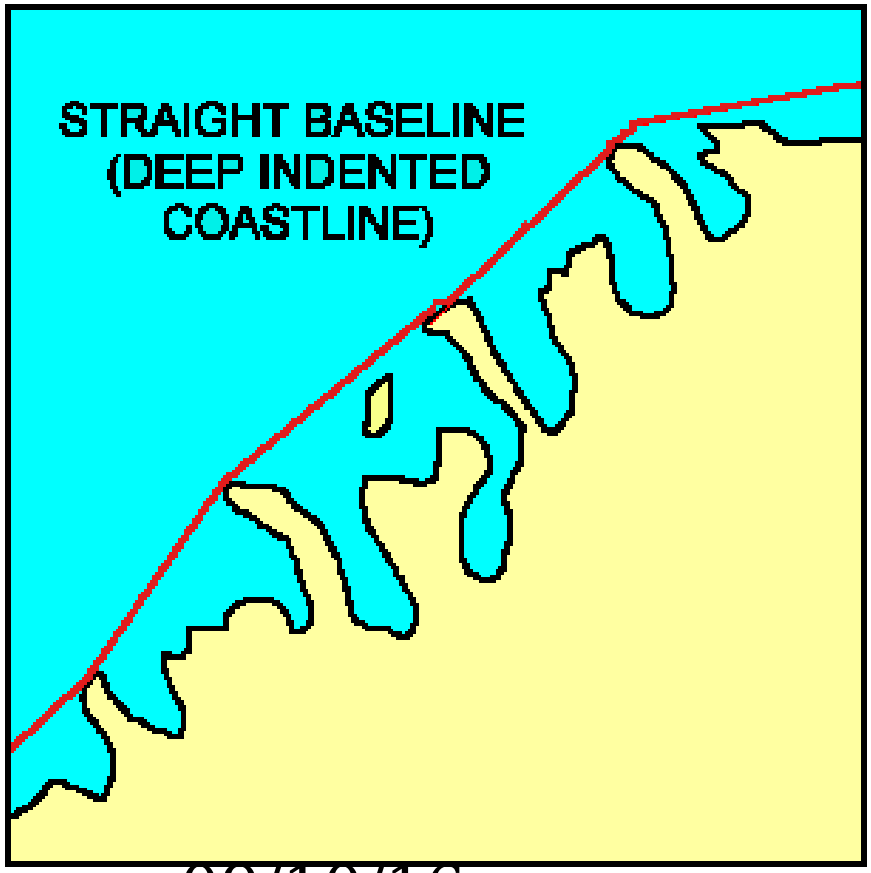
Baselines

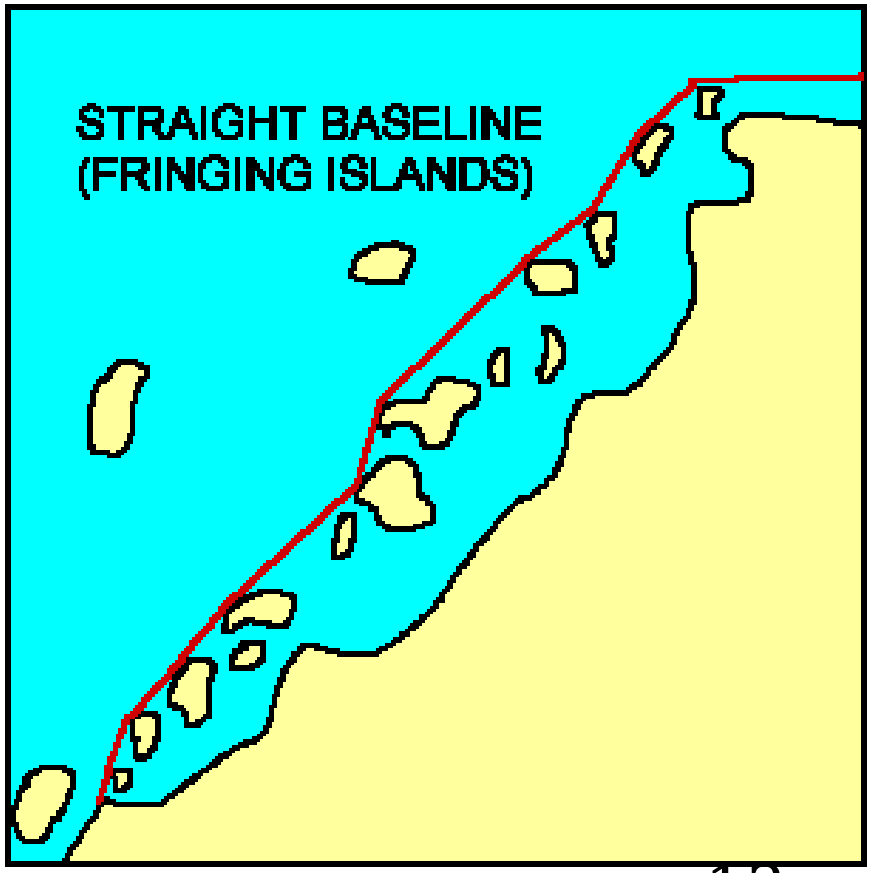
- Maritime zones are measured from the baseline, normally the low-water line
- Straight baselines used for:
  - Unstable coastlines (e.g. deltas)
  - Deeply indented coastlines
  - Fringing islands
- Bay closing lines
  - Juridical and Historic Bays

Normal Baseline

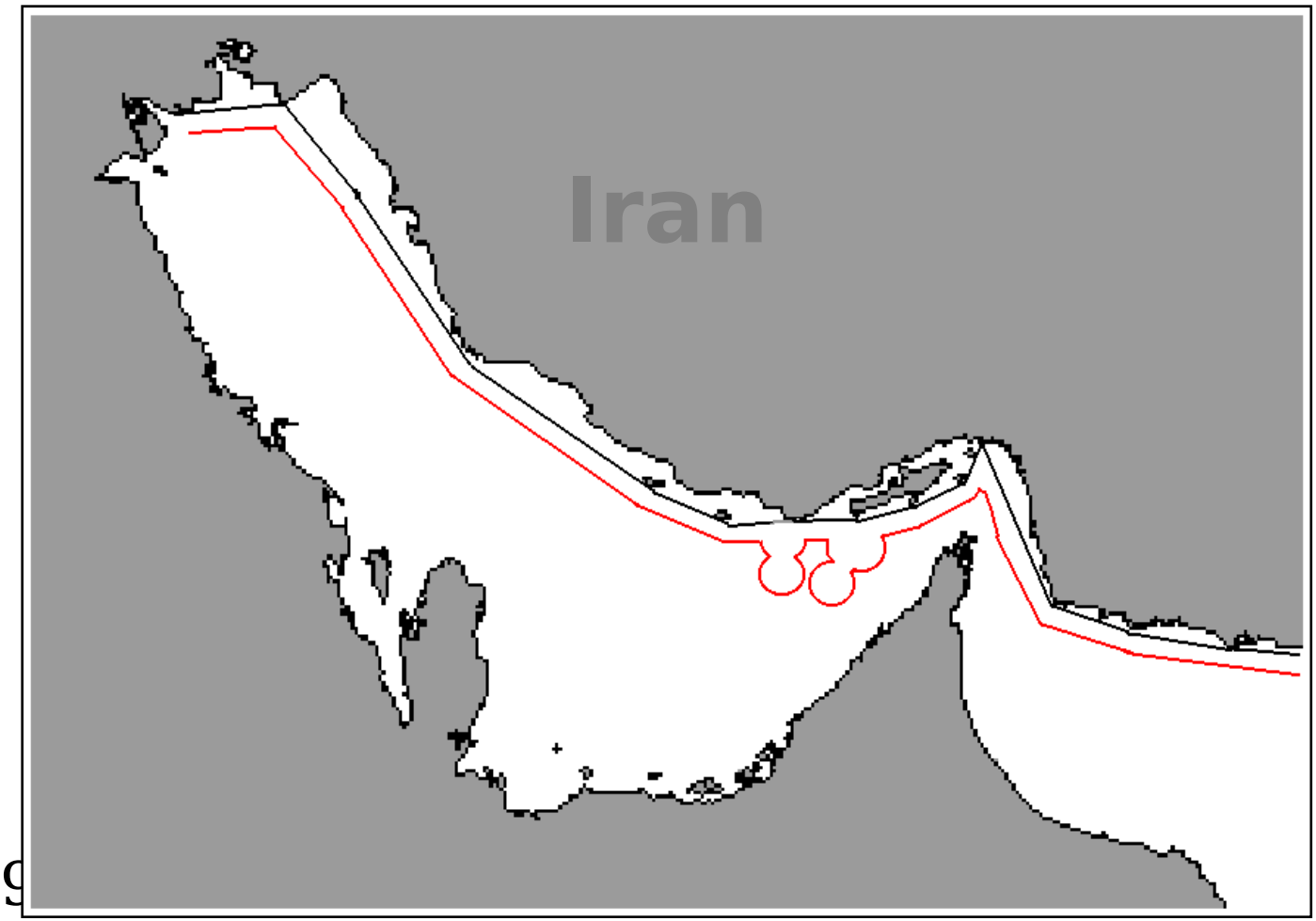


Straight Baseline





Excessive Straight Baseline Claim - Iran



Internal Waters

- Waters landward of the baseline
- Same legal character as the land itself; sovereign territory
- No right of navigation or overflight without coastal state permission unless in distress

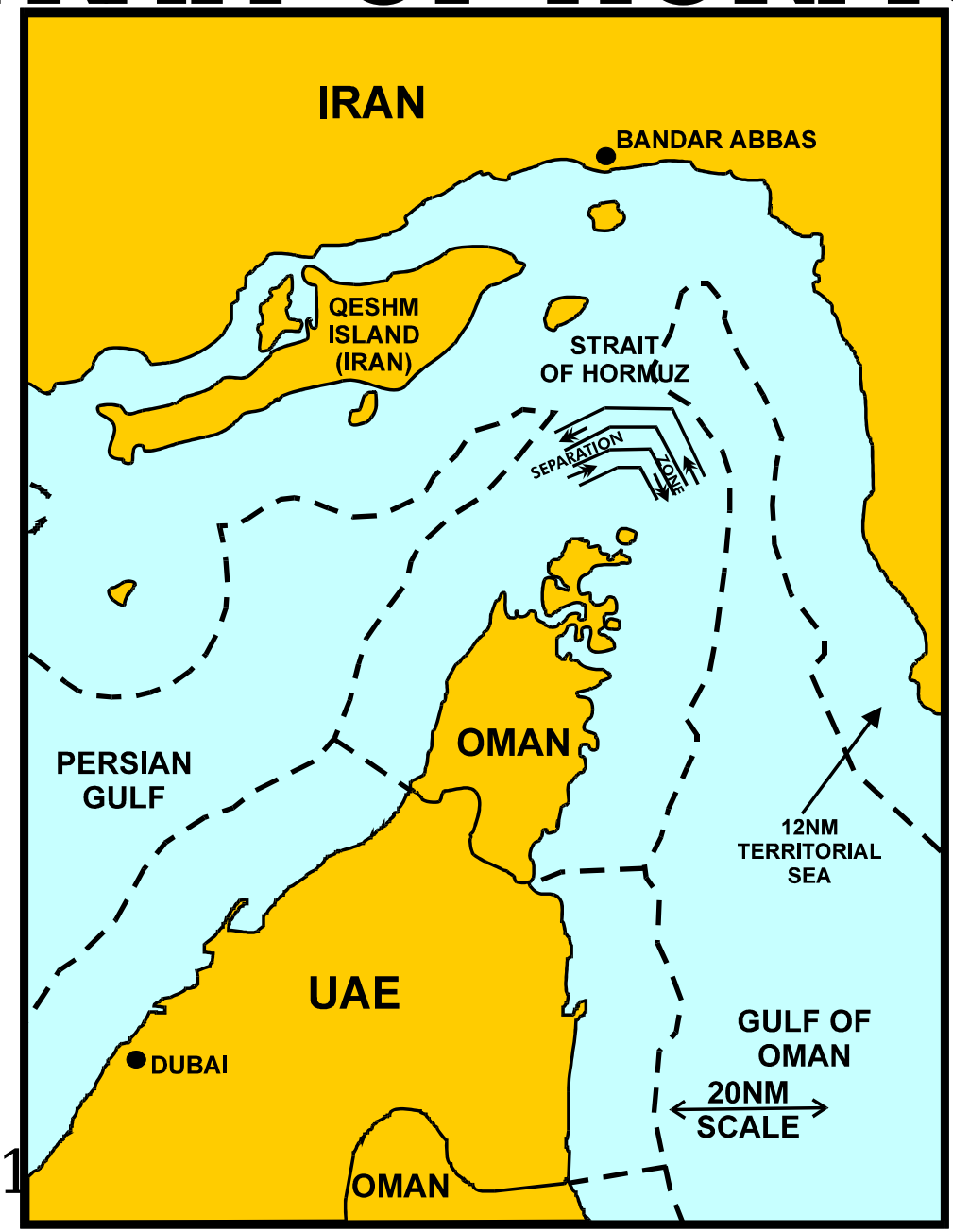
Territorial Sea

- Maximum breadth of 12 Nautical Miles
- Full coastal state sovereignty, subject to rights of:
  - Innocent Passage
  - Transit Passage (Straits)
  - Archipelagic Sea Lanes Passage (Archipelagos)
  - Safe Haven/Safe Harbor
  - Right of Assistance Entry
- Subject to temporary closure for security purposes, except in straits

International Straits

- Defined: Straits used for international navigation through the territorial sea between one part of the high seas or exclusive economic zone and another part of the high seas or exclusive
- Ships and aircraft of all nations enjoy the right of unimpeded transit passage
- Transit passage is not suspendable

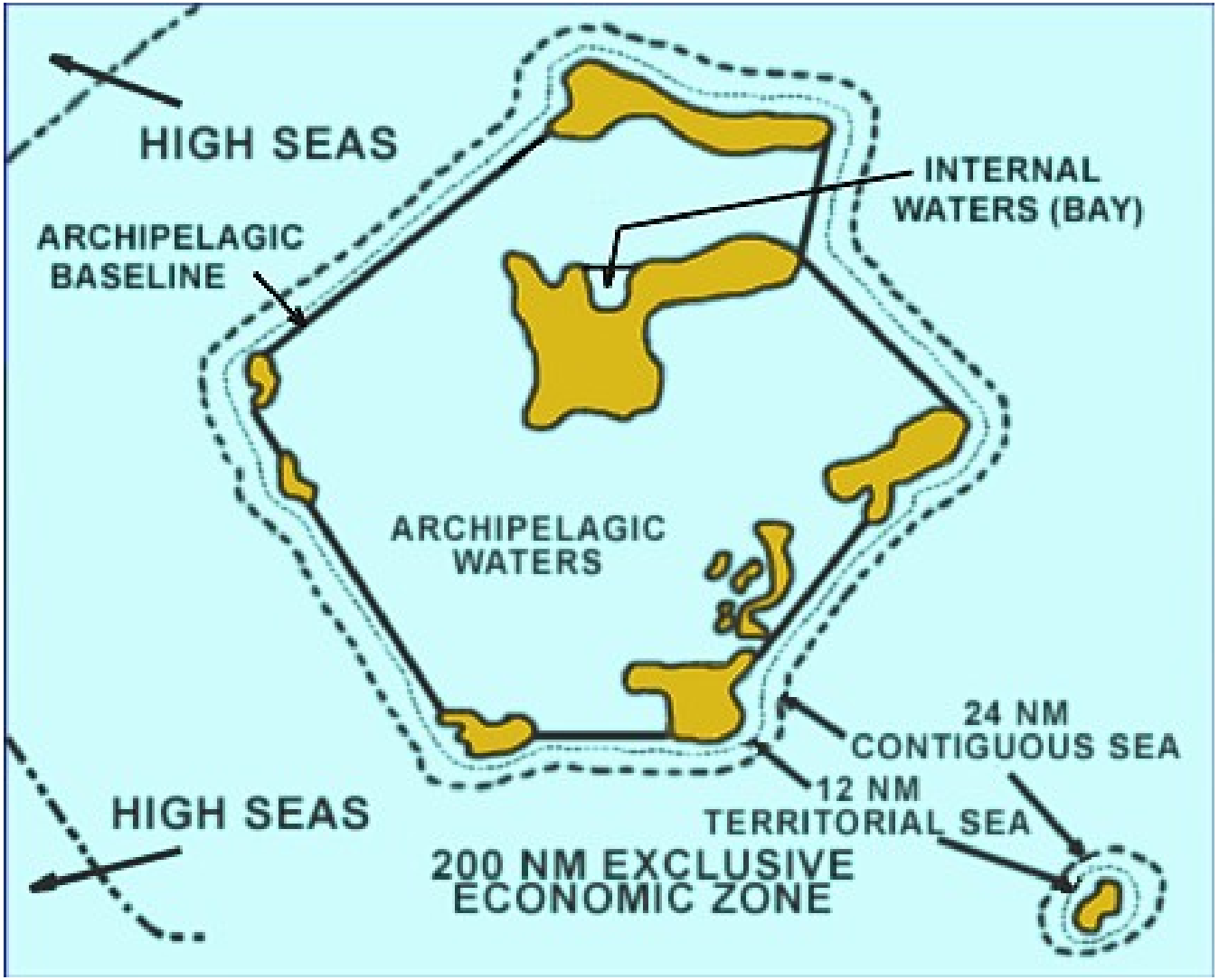
STRAIT OF HORMUZ



Archipelago

- A nation constituted wholly of one or more groups of islands
- Archipelagic nations may draw straight baselines joining outermost points of islands
- Waters enclosed within the archipelagic baselines are known as archipelagic waters
- Archipelagic baselines are also the baseline from which the territorial sea, contiguous zone, and exclusive economic zone are measured

ARCHIPELAGIC STATE



Contiguous Zone

- Maximum breadth of 24 Nautical Miles from baseline
- Law enforcement zone for:
  - Customs
  - Fiscal
  - Immigration
  - Sanitation
- High Seas freedoms of navigation and overflight apply

Exclusive Economic Zone

- Maximum breadth of 200 nautical miles from the baseline
- Sovereignty over the natural resources in the zone
- Jurisdiction over artificial islands, structures, marine scientific research, and protection of the marine environment
- High Seas freedoms of navigation and overflight apply

High Seas

- High seas include all parts of the ocean seaward of the Exclusive Economic Zone
- Not subject to coastal state sovereignty, jurisdiction or control
- Where a coastal state has not claimed an EEZ, high seas begin seaward of the territorial sea

Navigation and Overflight Rights

Territorial Sea

- Right of innocent passage for all ships
- Regardless of armament or means of propulsion
- Surface right only; no right of overflight!
- Submarines must transit on the surface
- Cannot be conditioned on prior notification or authorization

INNOCENT PASSAGE

- Continuous and expeditious traversing of the territorial sea
- Includes stopping and anchoring, but only:
  - Incidental to normal navigation
  - As rendered necessary by force majeure or distress
  - To render assistance
- Not prejudicial to peace, good order, or security of the coastal state

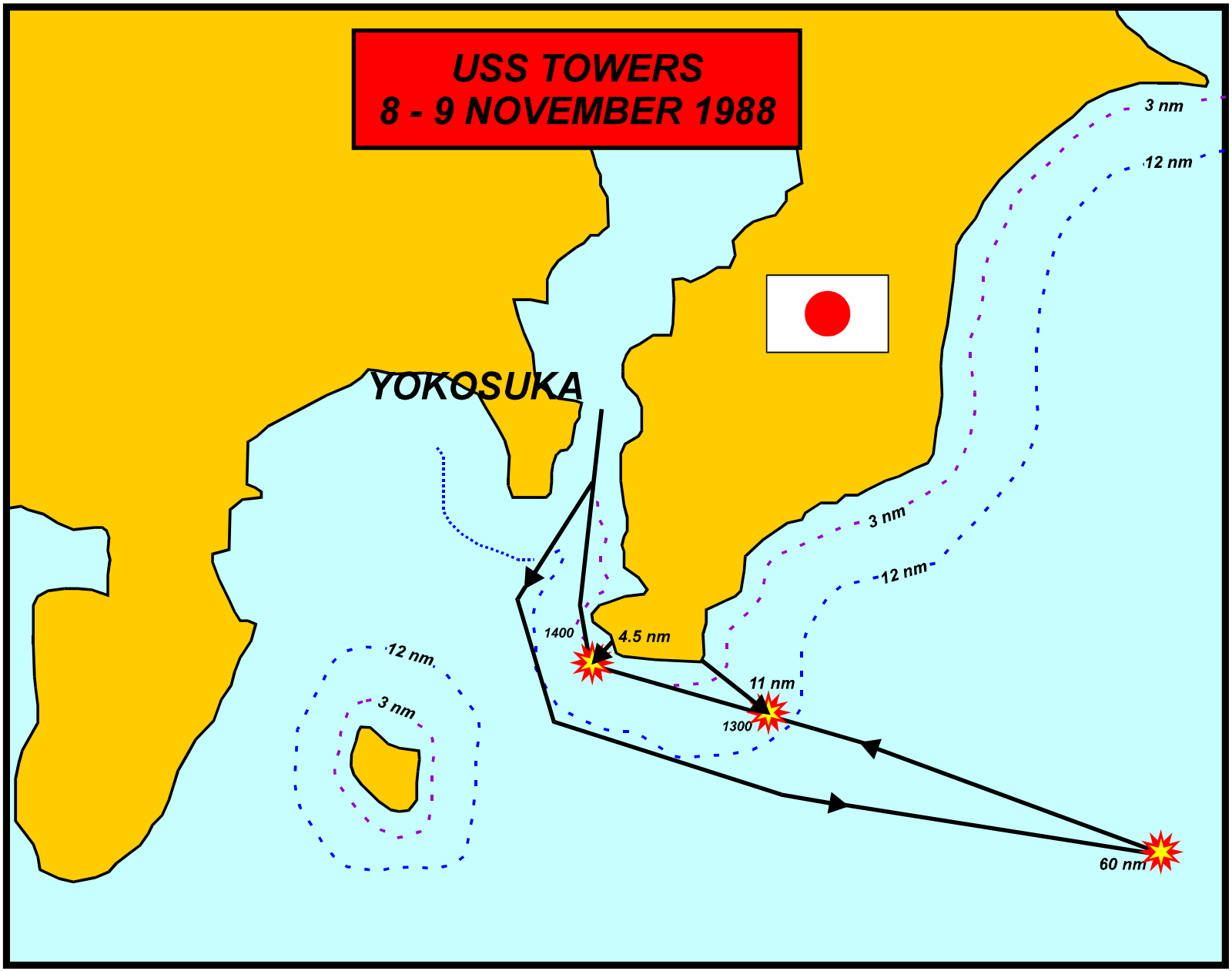
INNOCENT PASSAGE
PROHIBITED ACTIVITIES

- Innocent passage does not include:
  - Any threat or use of force against the coastal state
  - Weapons exercises or practice
  - Launching or recovery of aircraft
  - Intelligence collection against the coastal state
  - Research or survey activities
  - Interfering with communications systems

INNOCENT PASSAGE
PROHIBITED ACTIVITIES

- Innocent passage does not include:
  - Acts of propaganda directed against coastal state
  - Loading/unloading of goods/persons contrary to coastal states customs, fiscal, immigration, sanitation laws
  - Willful and serious pollution
  - Fishing activities
  - Any activity not having a direct bearing on passage

USS TOWERS Incident



USS TOWERS Incident CNO Endorsement on Investigation

“On 9 November 1988, USS TOWERS twice fired her aft 5”/54 gun mount while within the territorial sea of Japan. Done without the permission of the Japanese Government, this gun firing violated Japanese sovereignty, and was an unsafe gun firing in heavily used sea lanes with other vessels present, while USS TOWERS had inoperable surface search, air search, and navigational radars, and without accurately plotting either her own position or that of the other vessels.”

International Straits

- The right of transit passage applies in international straits overlapped by territorial seas
- Transit passage exists throughout the entire strait and its approaches, and not just the area overlapped by the territorial sea

Transit Passage

- Defined: the exercise of the freedoms of navigation and overflight solely for the purpose of continuous and expeditious transit in the normal modes of operation
  - Submarines may transit submerged
  - Surface ships may transit in a manner consistent with sound navigational practices and the security of the force, including formation steaming and the launching and recovery of aircraft

Transit Passage

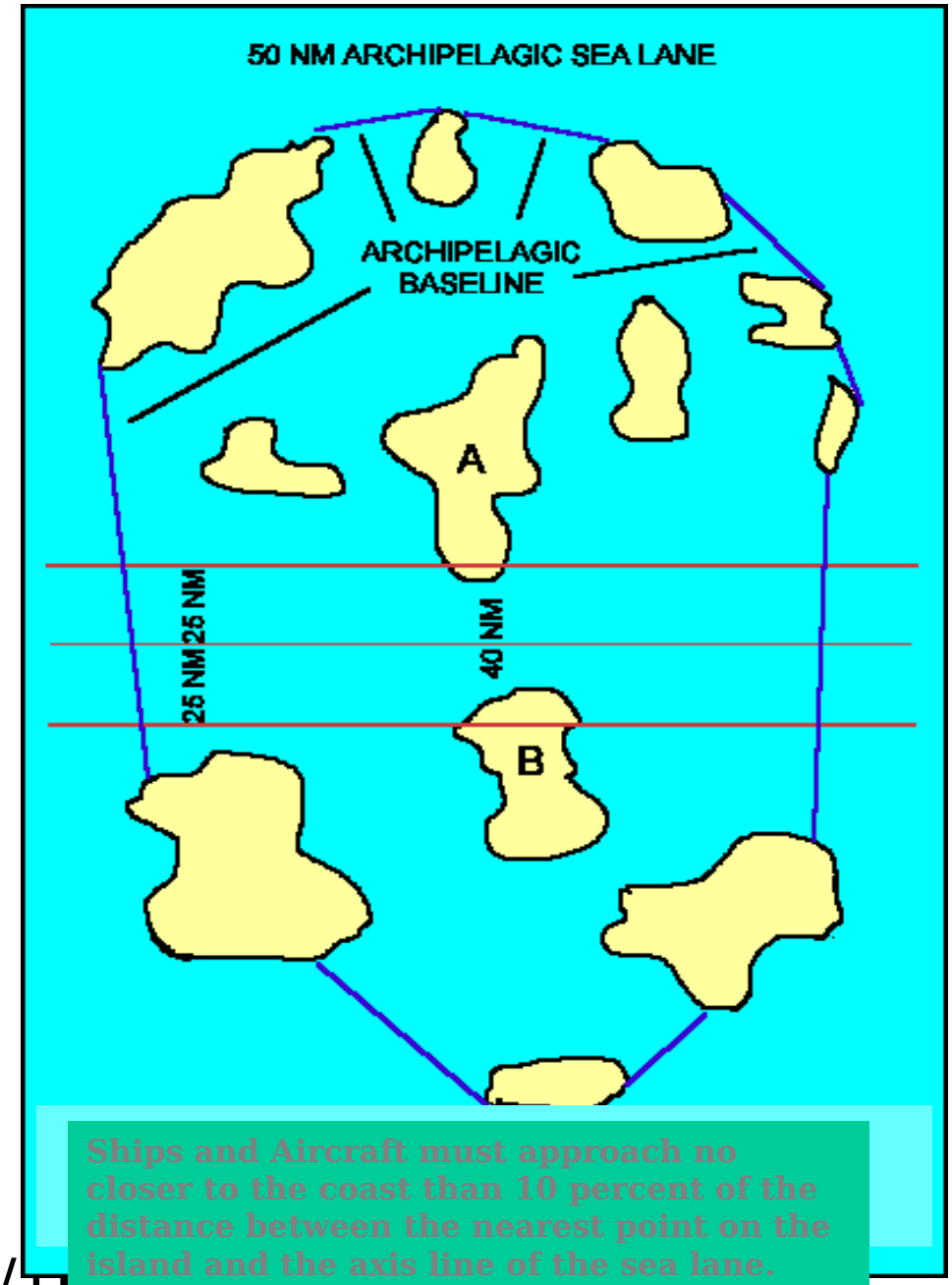
- All transiting ships and aircraft must:
  - Proceed without delay
  - Refrain from the use threat or use of force against the nations bordering the strait
  - Refrain from activities other than those incident to their normal modes of continuous and expeditious transit.
- State aircraft will “normally” comply with Rules of the Air and will show “due regard” for safety of navigation.
- Aircraft must monitor ATC frequency.

Archipelagic Waters

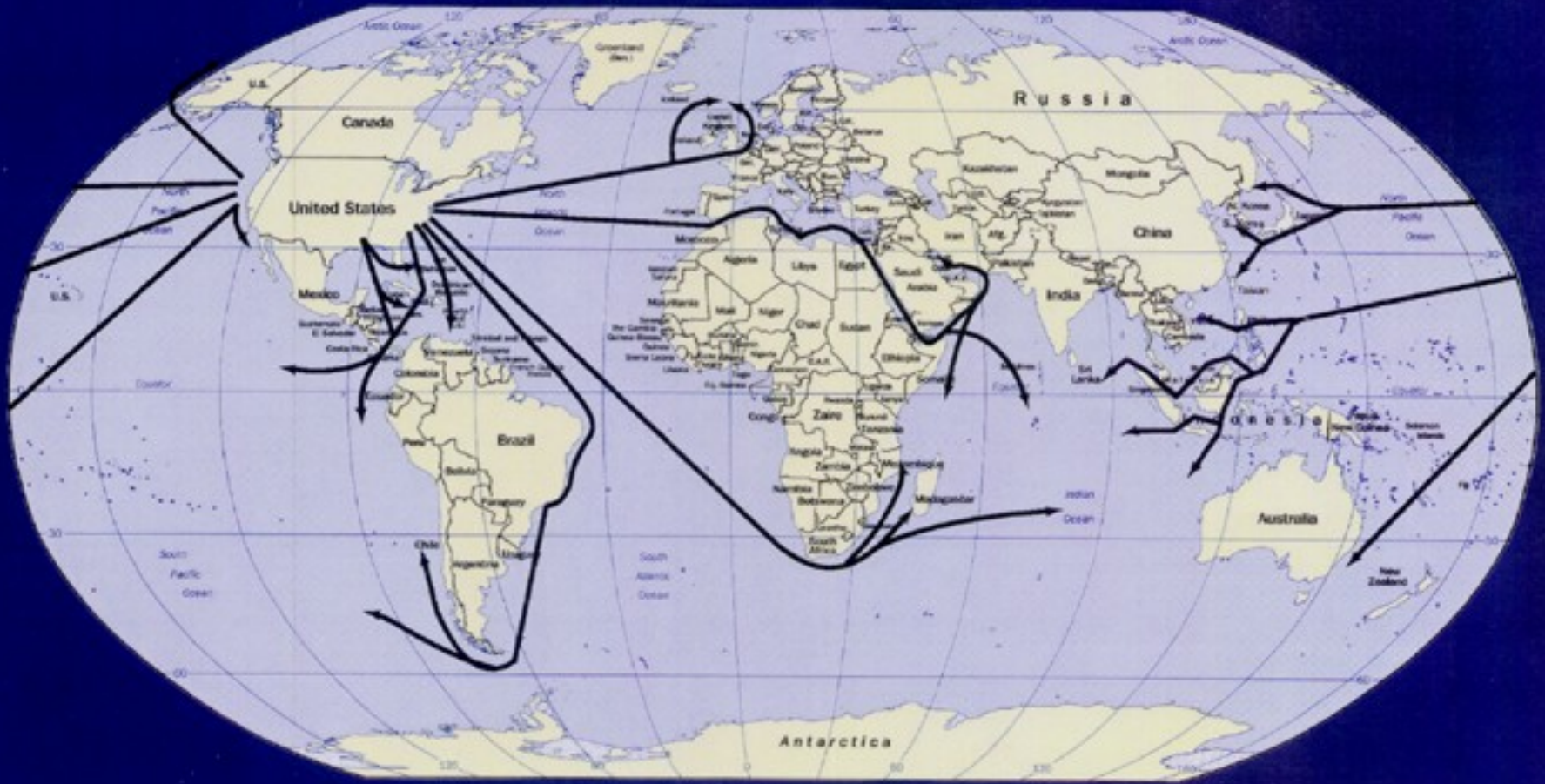
- All ships and aircraft enjoy the right of archipelagic sea lanes passage
- Archipelagic sea lanes passage applies to all routes normally used for international navigation and overflight
- May not be hampered or suspended for any purpose

Archipelagic Sea Lanes Passage

- Defined: the exercise of freedom of navigation and overflight for the sole purpose of continuous, expeditious and unobstructed transit through archipelagic waters by ships and aircraft in their normal mode of operations
  - Submarines may transit submerged
  - Surface ships may transit in a manner consistent with sound navigational practices and the security of the force, including formation steaming and the launching and recovery of aircraft


50 NM ARCHIPELAGIC SEA LANE
ARCHIPELAGIC
BASELINE
A
B
25 NM
25 NM
40 NM
Ships and Aircraft must approach no closer to the coast than 10 percent of the distance between the nearest point on the island and the axis line of the sea lane.

STRATEGIC STRAITS



WITH TRANSIT PASSAGE RIGHTS
WITHOUT TRANSIT PASSAGE RIGHTS
Arctic Ocean
North Pacific Ocean
South Atlantic Ocean
Indian Ocean
Equator
Iceland
Sweden
Norway
Finland
Ireland
Belarus
Poland
Ukraine
France
Spain
Portugal
Italy
Greece
Turkey
Kazakhstan
Mongolia
China
N. Korea
S. Korea
Japan
Iran
Afg.
Pakistan
India
Saudi Arabia
Morocco
Algeria
Libya
Egypt
Tunisia
Mauritania
Mali
Niger
Chad
Sudan
Ethiopia
Somalia
Nigeria
Congo
Zaire
Tanzania
Angola
Zambia
Mozambique
Zimbabwe
Namibia
Botswana
South Africa
Madagascar
Philippines
Indonesia
Papua New Guinea
Australia
New Zealand
Fiji
Solomon Islands

Navigational & Overflight Regimes

Waters	Regime
• Internal Waters	Consent
• Territorial Seas/ Archipelagic Waters	Innocent Passage
• International Straits	Transit passage
• Archipelagic Sea Lanes	Archipleagic Sea Lanes Passage

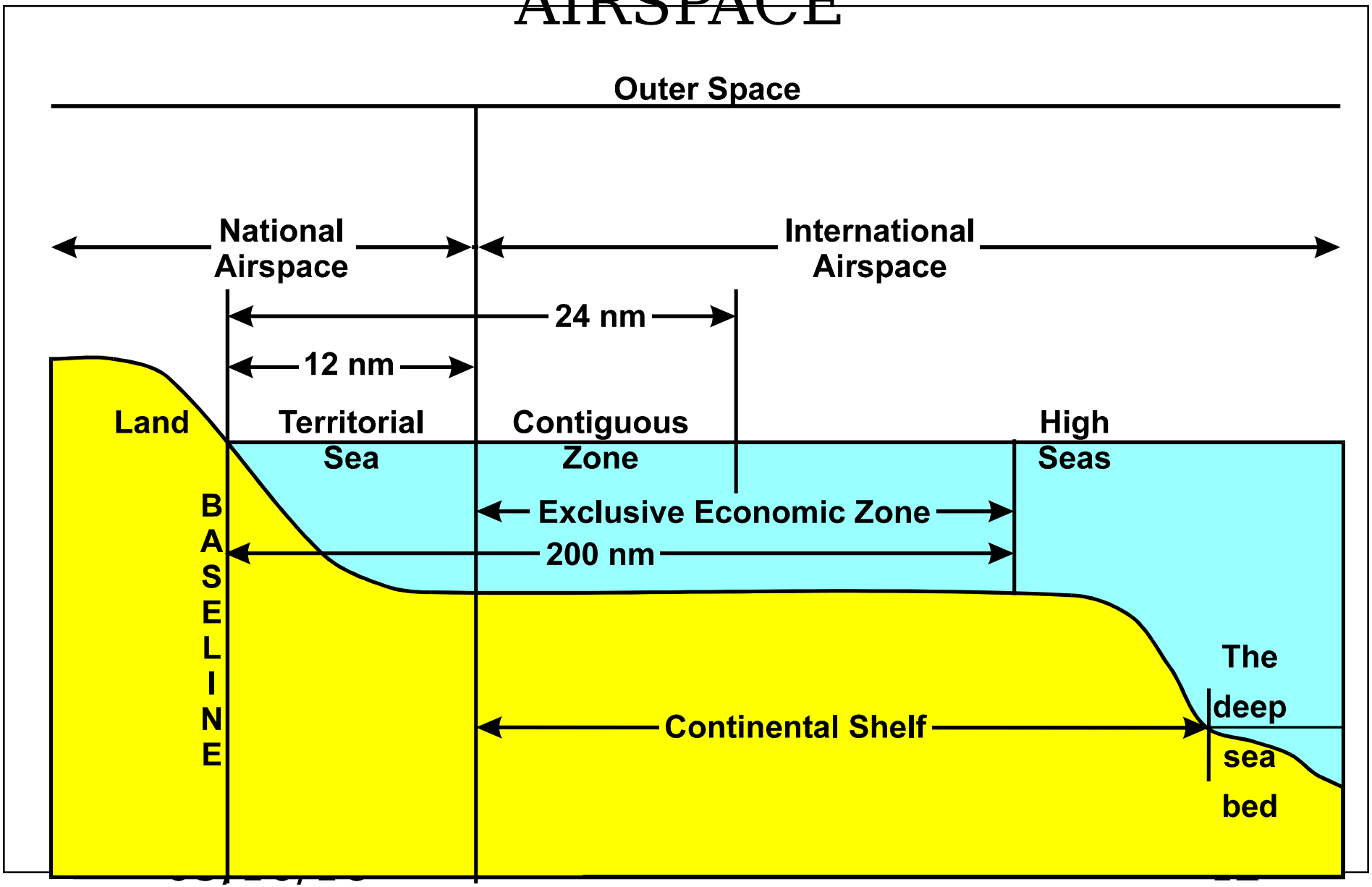
Navigational regimes (Continued)

Waters	Regime
• Contiguous Zone	High Seas Freedoms
• EEZ	High Seas Freedoms
• High Sea Freedoms	High Seas

Overflight Rights Under the Law of the Sea

- Territorial Sea: None without consent. There is no innocent passage for aircraft
- International Straits: Transit passage right of continuous and expeditious transit.
- Archipelagic Sea Lanes: Same as transit passage rights in international straits.
- Contiguous Zone and EEZ: Full freedom of overflight
- High Seas: Full freedom of overflight

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



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Freedom of Navigation Program

Freedom of Navigation Program

- Combination of diplomatic protests and operational challenges designed to demonstrate U.S. non-adherence and non-recognition of excessive maritime claims
- Operational challenges conducted with ships and aircraft
- Annual report to the President summarizing all FON challenges

Freedom of Navigation Operations

FY 99 FON Challenges

- Conducted 29 FONOPS in FY-99
- Challenged six nations claiming territorial seas in excess of 12 NM
- Using aircraft, challenged excessive straight baseline claims (Burma); permission to enter security zones (Yemen, Saudi Arabia, and Sudan); permission to conduct military ops in the EEZ (Malaysia)

Recent Issues

- China
- Venezuela
- El Salvador

What to remember from this presentation . . .

- Maritime Zones
- Navigation and overflight regimes
  - Innocent passage
  - Transit passage
  - ASL passage
  - High Seas freedoms
- Freedom of Navigation Program